

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
DOCKET NO. 3:07-cv-00016-W**

BAYTREE ASSOCIATES, INC.,)	
)	
Plaintiff,)	
)	
v.)	
)	
DANTZLER, INC.,)	ORDER ON MOTION
)	and
Defendant and Third-Party Plaintiff,)	ORDER TO SHOW CAUSE
v.)	
)	
ORACLE USA, INC.,)	
)	
Third-Party Defendant.)	
)	

THIS MATTER is before the Court on the Motion for Third Party Defendant Oracle USA, Inc., Regarding Dantzler, Inc., Violation of Briefing Order (Doc. No. 103). For the reasons stated herein, the motion is granted in part and denied in part.

As an initial matter, the word limit in this case has received much attention. Not only were the parties made aware of the word limit for dispositive briefs in the Pretrial Order and Case Management Plan (Doc. No. 34, p. 7, ¶ (c)(ii)), but Plaintiff in this case filed two separate motions for expansion of the word limit (Docs. Nos. 88, 90). Both of these motions, and the Court's orders ruling on them (Docs. Nos. 89, 91), were served on all parties, including Dantzler. Per the text-only order entered on September 5, 2008, the word count limit for dispositive motions and responses thereto was 7,500 words. Dantzler was obviously aware of this word limit, as evidenced by its certification contained in its responses to the two pending motions for summary judgment, wherein

counsel for Dantzler certified that, “excluding the caption and certification,” the word count in the response brief did not exceed 7,500 words. (Doc. No. 101, p. 27; Doc. No. 102, p. 26).

Nevertheless, Dantzler’s counsel exceeded this word count limit by 458 words in one document (Doc. No. 102) and 353 words in the other document (Doc. No. 101). Dantzler’s counsel represented to counsel for Oracle that exceeding such limitation was unintentional, and recent filings by Dantzler, filed a day after the filing of the instant motion, indicate the original word count did not include the footnotes (Docs. Nos. 104, 105). Oracle now seeks, as a remedy, to have the Court extend the word limit for the reply briefs from 2,000 words to 2,400 words.

Because the Local Rules for this Court provide that reply briefs should be “limited to discussion of matters *newly raised* in the response,” LCvR 7.1(E) (emphasis added), the Court sees no need to expand the word count limit for the reply briefs in this case, particularly where the moving parties already received a substantial expansion of the word count for the filing of their motions. Instead, the Court will strike the footnotes contained in Dantzler’s response briefs.

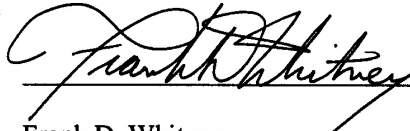
The Court, however, is extremely troubled by the misrepresentation in Defendant’s response briefs regarding the word count because the certification specifically notes that it only excludes the caption and certification. In the Court’s view, this is especially disturbing where defense counsel has already been warned once by the Court about misrepresenting information to the Court. As such, Defendant shall SHOW CAUSE at the hearing on the motions for summary judgment why the Court should not sanction Defendant for the inaccurate certifications contained in both of these briefs. Although it appears from Dantzler’s recent filings regarding the word count certification that such misrepresentation was due to counsel’s failure to include footnotes, counsel’s inaccurate representations to the Court are negligent at best, particularly when defense counsel should have

been extra cautious in light of the Court's prior warning. As such, the Court is inclined to fine Dantzler's counsel \$1 per extra word and also the attorneys' fees incurred by counsel for Oracle in filing this motion.

IT IS THEREFORE ORDERED that Oracle's Motion Regarding Dantzler's Violation of Briefing Order (Doc. No. 103) is GRANTED in part and DENIED in part as explained herein. Counsel for Dantzler is ordered to SHOW CAUSE why sanctions should not be entered against them.

IT IS SO ORDERED.

Signed: October 1, 2008


Frank D. Whitney
United States District Judge

